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United States
Circuit Court of Appeals
For the Ninth Circuit.

KAICHIRO SUGIMOTO,

Appellant,

vs.

JOHN D. NAGLE, as Commissioner of Immigration
for the Port of San Francisco,

Appellee.

Transcript of Record.

Upon Appeal from the United States District Court for
the Northern District of California,
Southern Division.

FILED

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PAUL P. O'BRIEN,
CLERK

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[Clerk's Note: When deemed likely to be of an important nature, errors or doubtful matters appearing in the original certified record are printed literally in italic; and, likewise, cancelled matter appearing in the original certified record is printed and cancelled herein accordingly. When possible, an omission from the text is indicated by printing in italic the two words between which the omission seems to occur.]

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NAMES AND ADDRESSES OF ATTORNEYS
OF RECORD.

For Petitioner and Appellant:

Messrs. BIANCHI & HYMAN, Kohl Bldg.,
San Francisco, Calif.

For Respondent and Appellee:

UNITED STATES ATTORNEY, San Fran-
cisco, Calif.

District Court of the United States, Northern Dis-
trict of California, Southern Division.

Clerk's Office.

No. 20,006-K.

KAICHIRO SUGIMOTO, on Habeas Corpus,

PRAECIPE FOR TRANSCRIPT OF RECORD.

To the Clerk of Said Court:

Sir: Please issue transcript of record on appeal
and include the following papers:

1—Petition for habeas corpus.

2—Supplement and amendment to petition for
writ of habeas corpus.

3—Memorandum of opinion.

4—Petition for allowance of appeal.

5—Assignment of errors.

6—Order allowing appeal and fixing cost bond.

7—Cost bond.

8—Citation on appeal.

A. B. BIANCHI,
JOSEPH LEO HYMAN,
Attorneys for Appellant.

[Endorsed]: Filed Jul. 16, 1929. [1*]

In the Southern Division of the United States District Court, in and for the Northern District of California, First Division.

No. 20,006-K.

In the Matter of KAICHIRO SUGIMOTO, Restaurant Keeper, Rtg. SS. "Siberia Maru," 3/30/29.

PETITION FOR WRIT OF HABEAS
CORPUS.

To the Honorable United States District Judge
Now Presiding in the Above-entitled Court:

The petition of Kaichiro Sugimoto, who is hereinafter in this petition referred to as the "detained," respectfully shows and alleges, by and through his wife, Mrs. Yone Sugimoto, as follows:

I.

That the petition and application is made by the "detained's" next friend and relative, his wife;

*Page-number appearing at the foot of page of original certified Transcript of Record.

that said parties were married on the 2d day of October, 1924, at Susuin, California, and they ever since have been, and now are, husband and wife; that the reason said wife verifies and makes this petition is that she has knowledge of all the facts, and further that this petition must be filed this day; that she is informed by the Commissioner of Immigration at the United States Immigration Station at Angel Island that the "detained" is to be returned to Japan and/or Hawaii on a steamer sailing on or before 12 o'clock noon May 8, 1929; that the first opportunity afforded petitioner or her attorneys to see the record of the Immigration Service was at approximately 11 o'clock A. M., May 7, 1929; that there was not sufficient time to prepare the petition and take the same to Angel Island to the detained for his signature. [2]

II.

That the detained is unlawfully imprisoned, confined and restrained of his liberty by John D. Nagle, Commissioner of Immigration for the port of San Francisco, at the United States Immigration Station at Angel Island, County of Marin, within the Southern Division of the United States District Court, in and for the Northern District of California, through the Secretary of Labor, J. H. Davis, who is about, and threatens, to convey the "detained" upon a ship departing from San Francisco to Japan on May 8, 1929;

III.

That the cause of said imprisonment, detention

or deportation is that the said "detained" has not established his right to enter the United States in conformity with the Immigration Act of 1924, and that he is held subject to being deported, as aforesaid, by the secretary of the Department of Labor under the following orders as more particularly herein appears; that *detention* is being excluded on the following finding made by the Board of Special Inquiry, which same are in words and figures as follows, to wit:

“BY CHAIRMAN:—This applicant is applying for admission as a Returning Restaurant Keeper, under Sec. 4 (b) of the Act of 1924, and presented a Non-Quota Visa No. 365, dated at Yokohama, March 12, 1929, and a Japanese Passport showing him to be returning to the U. S. from a temporary visit abroad. SUGIMOTO, KAICHIRO, stated that he was admitted to Hawaii July 29, 1907, ex SS. ‘NIPPON MARU’ and his statement has been verified by the records of the Honolulu Office of this Service. Applicant has also stated that he came from Honolulu to the mainland on the SS. ‘ALAMEDA’ in July 1907. He, however, admitted that the latter statement is not true; that he in reality came to the U. S. on a freighter, name [3] unknown; that he paid \$60 to a Japanese hotel man in Honolulu for the privilege of being a stowaway, and was smuggled into the U. S. through this port from the said freighter in August, 1907. SUGIMOTO, KAICHIRO has testified that he remained in the U. S. continuously from 1907 or about

twenty-one years, until July 18, 1928, when he departed for Japan for a visit from which he is now returning. Applicant's long residence in the U. S. is verified by the statements of several persons who were interviewed by Inspector Davis of this Service. (See his report of April 6, 1929.) Applicant has a wife and two American-born children living in San Francisco, where is a proprietor of a restaurant. He is literate and has been medically released by the Medical Examiner of Aliens at this Station, showing that portion of the letter written to this Service by 'K. YAMAKWA' relating to Applicant's health to be untrue.

This applicant is returning from a temporary absence abroad, after having lived in the U. S. continuously for approximately 21 years, and is therefore entitled to have his case brought to the attention of the Department under the Seventh Proviso of Sec. 5 of the Act of 1917.

I move the applicant be excluded from this country and deported to Japan, the country from which he came, upon the ground that he entered the U. S. from Hawaii subsequent to Feb. 20, 1907, and was a Laborer, not in possession of a passport entitling him to enter the U. S. I move he be excluded on the further ground that he has not sustained the burden of proof as required by Sec. 23 of the Act of 1924.

By Member AUSTIN.—I second the motion.

By Member GOURSELL.—I concur." [4]

“Applicant is called before the Board.

Interpreter: Mrs. E. J. AUSTIN.

CHAIRMAN to APPLICANT.—You are informed that this Board has excluded you from admission to the U. S. on the ground that you entered the U. S. subsequent to Feb. 20, 1907, from Honolulu; that you were not in possession of a passport permitting you to enter this country; the burden of proof is upon you to prove that you have been legally admitted to the U. S. and you have failed to sustain that requirement of the law. You are therefore excluded and ordered deported to the country whence you came. You are advised that this decision is not final, that you have the right of appeal to the Secretary of Labor, Washington, D. C., which appeal will cost you nothing, and that you will be given 48 hours in which to give notice of such appeal.

Q. Do you wish to appeal?

A. Yes, I wish to appeal.

Q. On what ship did you come?

A. SS. ‘Siberia Maru’ of N. Y. K. Line.

Q. You are further advised that if deported it will be at the expense of the steamship company which brought you to this country, which must furnish you with quarters equal to those occupied by you on the vessel by which you arrived.

Q. How did you come?

A. Second cabin, from Yokohama, Japan.

Q. What were your expenses for transportation?

A. \$150. American currency.

Q. In the event you are deported and the steamship company fined for bringing you here, that portion of the fine which represents the passage money from the port of embarkation to this port should be sent to you at what foreign address?

A. Send to my wife at 1772 Sutter Street, San Francisco, Calif. [5]

Q. Any money collected for you from the steamship company must be sent to your foreign address after your deportation by check by the Collector of Customs.

A. I understand."

That said findings and order last referred to were made on April 8, 1929; that thereafter "detained" appealed to the Secretary of Labor; that the said Secretary of Labor affirmed the excluding decision of the Board of Special Inquiry with the proviso, however, that the "detained" was given permission to voluntarily "deport" himself, at his own expense, to Hawaii in lieu of the deportation prescribed by the Board of Special Inquiry; that said findings and order of the Secretary of Labor have not yet arrived at the Immigration Station aforesaid, except that a telegraphic report thereof has arrived at said station, and that said telegraphic report is in words and figures as follows, to wit:

"Washington, D. C., May 3, 1929.

Department affirmed exclusion Kaichiro Sugimoto (stop) Permission granted deported voluntarily own expense to Hawaii in lieu deportation."

IV.

That the said "detained" is not imprisoned or restrained by virtue of any official order or process or decree of any court; that the said imprisonment and detention are illegal and without authority of law for the following reasons:

(a) That the said "detained" is applying for admission as a returning restaurant keeper under Sec. 4 (b) of the Immigration Act of 1924 and presented a Non-Quota Visa No. 365 had at Yokohama, Japan, March 12, 1929, and a Japanese Passport showing him to be returning to the United States from a temporary visit abroad; [6]

(b) That the said "detained" was previously lawfully admitted at Honolulu, Territory of Hawaii, on, to wit, the 29th day of July, 1907, ex SS. "Nippon Maru"; that at said time the said Territory of Hawaii was, and ever since has been, a part of the United States;

(c) That said "detained," Kaichiro Sugimoto, has ever since been, and continuously during said time, a resident of the United States of America, save and except that he did depart therefrom for a temporary visit abroad on the 18th day of July, 1928, at which time he went to Japan, returning from said temporary visit on the 30th day of March, 1929, ex SS. "Siberia Maru" to the port of San Francisco; that he has ever since said time been detained at Angel Island;

(d) That the said "detained" is now, and was prior to his leaving on said temporary visit, and

for many years prior thereto, the owner and keeper of a restaurant, and during said time he was not, and is not now, a laborer skilled or unskilled; that he is married, has a wife and two children and three stepchildren, all residing in the City and County of San Francisco, State of California, and dependent upon him for support;

(e) That the *exercisal* of his election or option, under the order of the Secretary of Labor, to voluntarily depart for the Territory of Hawaii is a vain and useless act; that it would necessitate expenditures to and from said Territory; that if said detained should depart voluntarily for the Territory of Hawaii he would, and intends, to immediately return to his family and business at the City and County of San Francisco, State of California, as one who is not a laborer skilled or unskilled. [7]

V.

That the Secretary of Labor has no authority in law or jurisdiction to order in any manner whatsoever or enforce the removal and deportation of the "detained" to Japan, or to prevent his return from the Territory of Hawaii to San Francisco in the event of his election to deport voluntarily for said Territory, and that the said Secretary of Labor had no proof whatsoever to show or justify the conclusion that the said "detained" was not entitled to land as one returning from a temporary visit abroad.

VI.

That all of the matters of fact set forth in the

foregoing paragraph are found and contained in the record of the Board of Special Inquiry hereinbefore referred to and are undisputed; that in addition thereto, the said record shows that the said "detained" is of good moral character and in every way admissible under the Immigration Laws of 1917; that the original record, or a copy thereof, is, on account of the shortness of the time, not available for the purpose of setting out *verbatim* herein, but in this respect petitioner stipulates that the record of the Immigration Service and/or Secretary of Labor in connection herewith may be admitted as a part hereof or otherwise, and she prays that if it becomes necessary that she be allowed, by amendment later, to furnish a *verbatim* copy thereof.

WHEREFORE, your petitioner prays that a writ of habeas corpus issue herein directed to the said Commissioner of Immigration commanding him to produce the body of said detained, and setting forth the time and cause of his detention before your Honor at a time and place to be therein [8] specified, to the end that the cause of detention of said "detained" may be inquired into, and that he be relieved of restraint and discharged from custody without delay, or that in lieu thereof there issue from this Honorable Court an order to show cause, if any, why said writ should not be granted and said "detained" discharged, and that pending the hear-

ing of said order to show cause the said Commissioner of Immigration do nothing in the premises.

YONE SUGIMOTO,
Petitioner.

A. B. BIANCHI,
JOSEPH LEO HYMAN,
Attorneys for Petitioner. [9]

United States of America,
Southern Division of the Northern
District of the State of California,
City and County of San Francisco,—ss.

Yone Sugimoto, being first duly sworn, deposes and says:

That she is the petitioner named in the foregoing petition; that the same has been read and explained to her and that she knows the contents thereof; that the same is true of her own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters she believes it to be true.

YONE SUGIMOTO.

Subscribed and sworn to before me this 7th day of May, 1929.

[Notary Seal] M. V. COLLINS,
Notary Public, in and for the City and County of
San Francisco, State of California.

[Endorsed]: Receipt of a copy of the within petition for writ of habeas corpus is hereby admitted this 7th day of May, 1929.

United States District Attorney for the Commissioner of Immigration.

Filed May 7, 1929. [10]

[Title of Court and Cause.]

SUPPLEMENT AND AMENDMENT TO PETITION FOR WRIT OF HABEAS CORPUS.

To the Honorable United States District Judge Now Presiding in the Above-entitled Court:

It is respectfully shown:

FIRST: That on the 7th day of May, 1929, a petition and application for a writ of habeas corpus was made by Mrs. Yone Sugimoto, the petitioner therein, for and on behalf of the detained, her husband, namely Kaichiro Sugimoto, and that said petition was on said date filed in the court above entitled; that upon said petition, duly verified, an order to show cause was made and granted, directing the Commissioner of Immigration at Angel Island to show cause, if any he has, why a writ of habeas corpus should not be granted and the detained therein mentioned discharged.

SECOND: That at the time of the filing of said petition there had not been received from the office of the Secretary of Labor, at Washington, D. C., nor was there available to the petitioner, the de-

tained, or their attorneys, all or any part of the original record of the Secretary of Labor, or any copy thereof; and that, accordingly, the petitioner therein, by and through her attorneys, prayed therein that they be allowed by amendment to furnish a *verbatim* copy of the [11] whole or any part thereof.

THIRD: That since the filing of said petition, the whole record has been forwarded from the office of the Secretary of Labor, Washington, D. C., to the City and County of San Francisco, State of California, and there become available to the detained, your petitioner, and their attorneys; that therefore and in conformity with the rules of the court above entitled, and by way of amendment and supplement to the petition herein referred to, the said detained and the said petitioner, by and through their attorneys, do herein and following set forth a *verbatim* copy of the findings, decision and opinion of the Secretary of Labor and the office thereof:

“55663/591—San Francisco. May 2, 1929.

In re: KAICHIRO SUGIMOTO, 40.

This case comes before the Board of Review for further consideration on appeal.

Presiding: Messrs. Winnings, Finucane and D. S. White.

Attorney Roger O'Donnell heard May 2, 1929.

This record relates to a 40 year old male native and subject of Japan who arrived at the port of San Francisco on March 30, 1929. Claims to have

been in the United States from July, 1907, until July 18, 1929; destined to wife, two children and three stepchildren; intends to remain permanently. Presents non quota immigration visa granted as a returning resident by the American Consul at Yokohama on March 12, 1929.

Excluded as an alien ineligible to citizenship (alien not having established that he was previously lawfully admitted to this country and entitled to the non quota immigration [12] visa he presents.) The excluding decision was affirmed by the Department April 22, 1929.

Attorney requests admission and calls attention to case 55622/335, where a Japanese lawfully admitted to Hawaii proceeded to the Mainland subsequent to the President's Proclamation of 1907 but where there was no record of such admission to the Mainland and nevertheless was admitted upon presentation of a non quota immigration visa on the theory that having been lawfully admitted to Hawaii, which is a part of the U. S. as defined in the Immigration Act of 1924, he is entitled to return to the Mainland.

This view is now held to be erroneous. Aliens admitted to Hawaii, who were not lawfully admitted to the Mainland after the President's Proclamation, are regarded as not having been admitted to all of the United States but are merely entitled to a limited admission, that is to Hawaii. The alien, therefore, is not entitled to a non quota visa to return to the Mainland as he was never previously lawfully admitted to the Mainland.

As an alternative request it is asked that the alien be permitted to return to Hawaii. Since he was lawfully admitted there and had a non quota immigration visa at the time of arrival at San Francisco, there is no objection to permitting him to resume a residence in Hawaii.

It is recommended that the request for outright admission be denied and that the excluding decision stand but that in lieu of deportation under the outstanding exclusion order alien be granted permission to depart voluntarily at his own expense to Hawaii, and that Honolulu be informed that the alien presented a valid non quota immigration visa at the time of his arrival at San Francisco, and if otherwise admissible, except as an immigrant not in possession of a non quota immigration visa Honolulu be authorized to admit him upon his arrival. [13]

L. PAUL WININGS,
Chairman Secy. & Comr. Gen's.
Bd. of Review.

TGF/VBE.

So ordered.

PETER F. SNYDER,
Asst. to Secy.

55663/591—San Francisco,

May 1, 1929.

In re: KAICHIRO SUGIMOTO, 40.

This case comes before the Board of Review for further consideration on appeal.

Presiding: Messrs. Winings, Finucane and D. S. White.

Attorney Roger O.'Donnell heard April 15, 1929.

This record relates to a 40-year old male native and subject of Japan who arrived at the port of San Francisco on March 30, 1929. Claims to have been in the United States from July, 1907, until July 18, 1929; destined to wife, two children and three step-children; intends to remain permanently. Presents non quota immigration visa granted as a returning resident by the American Consul at Yokohama on March 12, 1929.

Excluded as an alien ineligible to citizenship (alien not having established that he was previously lawfully admitted to this country and entitled to the non quota immigration visa he presents.) The excluding decision was affirmed by the Department April 22, 1929.

The alien was admitted to Hawaii on July 29, 1907, which admission is verified. While he first claims to have proceeded to this country in a regular manner, he later admitted that he came on a Freighter and paid \$60.00 to be brought to this country as a stowaway. Therefore, it appears that he was not regularly admitted to the Mainland.
[14]

Attorney contends that although the President's Proclamation prohibiting entry to this country of Japanese laborers who had passports limited to Mexico, Canada or Hawaii, was issued on March 14, 1907, the alien was not excludable until after the Gentleman's Agreement was entered into which attorney states was some time in January, 1908.

The Proclamation itself, based upon authority

granted the President under the Act of February 20, 1907, need no treaty or other agreement to put it into force and effect. The alien appears to have been a laborer at the time of his arrivan in Hawaii. Since it is admitted he proceeded to the Mainland after the President's Proclamation, as he admitted he entered the Mainland illegally, and as at the time of his entry he was required to undergo inspection and examination, and was of a class prohibited from admittion, he is an alien who was not previously admitted to continental U. S.

Although he was admitted to Hawaii, he has no right to proceed to any other part of the United States. The alien, therefore, is not entitled to the non quota immigration visa he presents.

It is recommended that the excluding decision be affirmed.

TGF/VBE.

L. PAUL WININGS,

Chairman, Secy. & Comr. Gen's Bd. of Review.

So ordered.

W. N. SMELSER,

Assistant to Secy."

FOURTH. That the said supplements and amendments are proposed, offered and filed by the said petitioner, for and on behalf of said detained; that the verification of and to said supplement and amendments is made by A. B. Bianchi, [15] one of the attorneys for petitioner, who has full knowledge of all the facts and matters stated in said amendments and supplement.

WHEREFORE, it is prayed that the foregoing be made a part of and considered a supplement and amendment to the petition herein referred to.

YONE SUGIMOTO,

Petitioner.

BIANCHI & HYMAN,

Attorneys for Petitioner. [16]

United States of America,
Southern Division of the Northern
District of the State of California,
City and County of San Francisco,—ss.

A. B. Bianchi, being first duly sworn, deposes and says: That he is an attorney-at-law, admitted to practice before all of the courts of the State of California and the court above entitled; that he is one of the attorneys for the petitioner and the detained mentioned in the foregoing amendments and supplement, and that he has read the foregoing supplement and amendment to petition for writ of habeas corpus and knows the contents thereof; that the same is true of his own knowledge, except as to those matters which are therein stated on information and belief, and as to those matters he believes it to be true.

A. B. BIANCHI.

Subscribed and sworn to before me this 29th day of May, 1929.

[Notary Seal] M. V. COLLINS,
Notary Public, in and for the City and County of
San Francisco, State of California.

[Endorsed]: Service and receipt of a copy of the within supplement and amendment to petition for writ of habeas corpus is hereby admitted this 29th day of May, 1929.

GEO. J. HATFIELD,
United States District Attorney.

Filed May 29, 1929. [17]

At a stated term of the Southern Division of the United States District Court for the Northern District of California, held at the courtroom thereof, in the City and County of San Francisco, on Friday, the 5th day of July, in the year of our Lord one thousand nine hundred and twenty-nine. Present: The Honorable FRANK H. KERRIGAN, Judge.

[Title of Cause.]

MINUTES OF COURT—JULY 5, 1929—ORDER
DENYING PETITION FOR WRIT OF
HABEAS CORPUS, ETC.

It is ordered that the petition for writ of habeas corpus heretofore submitted herein be and the same is hereby denied and the proceedings dismissed in accordance with memorandum opinion this day filed. Further ordered that the execution of the afore-said order be and the same is hereby stayed for the period of five days. [18]

[Title of Court and Cause.]

Before KERRIGAN, District Judge.

July 5, 1929.

BLANCHI & HYMAN, of San Francisco, Calif.,
Attorneys for Petitioner.

GEORGE J. HATFIELD, United States Attorney,
and H. A. VAN DER ZEE, Assistant United
States Attorney, Both of San Francisco, Calif.,
Attorneys for Respondent.

MEMORANDUM OPINION.

This is a petition for a writ of habeas corpus on behalf of Kaichiro Sugimoto, a Japanese. The petition shows that he was admitted to Hawaii July 29, 1907, and that shortly thereafter he stowed away on a freighter on which he came to the mainland, where he was smuggled ashore at San Francisco. He remained here until July 18, 1929, when he departed for Japan. He returned to San Francisco this year, presenting a Japanese passport bearing a nonquota immigration visa granted him as a returning resident by the American Consul at Yokohama on March 12, 1929, and has been excluded by the Board of Special Inquiry. This decision has been affirmed by the Board of Review, with permission, however, to return to Hawaii, where he was lawfully admitted in 1907, in lieu of deportation to Japan. [19]

The findings of the Board of Special Inquiry show detained to have a wife and several American-born children living in San Francisco, where he is the proprietor of a restaurant. He is also found to be literate, and in sound physical condition. The Board further finds that he was a laborer at the time of his arrival on the mainland in 1907.

The exclusion order is upon the ground that Sugimoto is not "an immigrant previously lawfully admitted to the United States, who is returning from a temporary visit abroad" (Immigration Act of 1924, Sec. 4 (b); 8 U. S. C. A., Sec. 204 (b)), in that he has not sustained the burden of proof as to his lawful admission to the United States previously to the present application for admission.

The pertinent statutory provision applicable to Sugimoto's original entry to the continental United States is as follows:

"Whenever the President shall be satisfied that passports issued by any foreign Government to its citizens or subjects to go to any country other than the United States, or to any insular possession of the United States or to the Canal Zone, are being used for the purpose of enabling the holder to come to the continental territory of the United States to the detriment of labor conditions therein, the President shall refuse to permit such citizens or subjects of the country issuing such passports to enter the continental territory of the United States from such other country or from such insular

possession or from the Canal Zone”: (8 U. S. C. A., Sec. 136 (h).) [20]

In accordance with this section, which was part of the Immigration Act of 1907, by Presidential Proclamation of Mar. 4, 1907, Japanese laborers with passports for Hawaii were excluded from the mainland, and this exclusion continues under the Presidential Proclamation of February 24, 1913. In the summer of 1907, therefore, when Sugimoto came to the mainland, his entry if he was a laborer, was unlawful.

Akira Ono vs. U. S., 267 Fed. 359.

The petition does not directly attack the finding that Sugimoto was a laborer in 1907 when he came to the mainland, but alleges that he has not been a laborer at any time since his entry. Of course, it is his status at the time of entry, and not that subsequent to entry which controls (*Tulsidas vs. Insular Collector*, 262 U. S. 258), and he has not sustained the burden of proof imposed upon him by Sec. 23, Immigration Act of 1924 (8 U. S. C. A., Sec. 221), as to a showing that he was not a laborer at the time of his surreptitious entry.

But it is urged on behalf of the alien that the illegality of his entry to the mainland in 1907 is immaterial, in view of his lawful entry and admission to Hawaii. This contention is based upon the definition of “United States” in sec. 28 (a), Immigration Act of 1924 (8 U. S. C. A., sec. 224a), which reads as follows;

“(a) The term ‘United States,’ when used in a geographical sense, means the States, the Territories of Alaska and Hawaii, the District of Columbia, Porto Rico, and the Virgin Islands; and the term ‘continental United States’ means the States and the District of Columbia”; [21]

It is argued in effect that the inclusion of Hawaii in this definition permits an alien lawfully admitted to Hawaii to establish his residence anywhere else in the United States, including the mainland, and to go and come from that residence, on temporary visits abroad, basing his right to re-enter on the primary admission to Hawaii.

The difficulty with this argument is that, whatever the rule might be with regard to aliens of other nationalities, in the case of Japanese laborers the lawful admission to Hawaii is a restricted admission and, under the Presidential Proclamations, does not carry with it the right to admission to the mainland. The Immigration Act of 1924 is expressly stated to be in addition to and not in substitution for the provisions of the immigration laws (Sec. 25; 8 U. S. C. A., sec. 223). The labor provisions of the Immigration Act of 1907, (*supra*), *nam* the Presidential Proclamations thereunder are therefore still operative. A Japanese laborer, although lawfully admitted to Hawaii, is still barred from entry to the mainland.

This being true, Sugimoto is in no better position with regard to his right of entry to the mainland

then he would have been in 1907. No right of re-entry can be predicated upon residence in the United States established following unlawful entry. *Hurst vs. Nagle*, 30 Fed. (2d) 346. Accordingly, Sugimoto would not be intitled to admission to the continental United States a nonquota immigrant under Sec. 4 (b) of the Immigration Act of 1924.

But it is further contended that, assuming that he is not entitled to admission under the above section, he is nevertheless entitled to admission under Sec. 3 (6) of the [22] same Act (8 U. S. C. A., sec. 203 (6)), as he is not now a laborer. By this section admission as a nonimmigrant is accorded to "an alien entitled to enter the United States solely to carry on trade under and in pursuance of a present existing treaty of commerce and navigation." By an Executive Order of July 12, 1926, such non-immigrants must present visaed passports. The State Department is authorized to make regulations to carry the order into effect. Accordingly, the State Department has directed consular officers as follows, with respect to visas under Sec. 3 (6) Act of 1924:

"In order to obtain a visa under the statutory and treaty provisions referred to the applicant must show that he is going to the United States in the course of a business which involves, substantially trade or commerce between the United States and the territory stipulated in the treaty. For example, one going to the United States as a member or agent of

a commercial concern in his own country, in transactions involving commerce between the two countries, or one going to the United States with a stock of goods produced in his own country, to be sold in the United States and to be replenished from other goods produced in his own country, would be entitled to the benefits of the statutory and treaty provisions in question.

The distinction to be observed is between the case of one engaged in trade or commerce between the two countries and the case of an immigrant or settler who seeks to come without such a relation to commerce, but who may thereafter engage in purely local transactions which lie outside the purposes of the commercial treaties." [23] (General Instruction Circular, No. 926, Department of State, Secs. 58, 59, pp. 16, 17.)

The petition in this case alleges:

(IV. e) "That the exercisal of his election or option, under the order of the Secretary of Labor, to voluntarily depart for the Territory of Hawaii is a vain and useless act; that it would necessitate expenditures to and from said Territory; that if said detained should depart voluntarily for the Territory of Hawaii he would, and intends, to immediately return to his family and business at the City and County of San Francisco, State of California, as one who is not a laborer skilled or unskilled."

Inferentially, this is intended to be a claim of right to enter under Sec. 3 (6), and I am asked to hold in effect that Sugimoto is entitled to admission under this section and to disregard the absence of the required consular nonimmigrant visa from his passport. In certain instances where the right of the alien to a visa is clear the courts have held that the alien will not be excluded merely because of the necessity of what amounts to a clerical correction. *Re Spinella*, 3 Fed. (2d) 196; *Ex parte Seid Soo Hong*, 23 Fed. (2d) 847. But in the present case it would appear that Sugimoto, who, as a restaurant keeper, would engage in purely local transactions, could not be granted a consular visa as a nonimmigrant (See Instruction, *supra*), and could not be admitted under Sec. 3 (6).

For the reasons above set forth, the petition for a writ of habeas corpus in this case does not set forth grounds for relief, and the petition will be denied and dismissed.

KERRIGAN,

U. S. District Judge. [24]

[Endorsed]: Filed. Jul. 5, 1929. [25]

[Title of Court and Cause.]

PETITION FOR ALLOWANCE OF APPEAL.

To the Honorable FRANK H. KERRIGAN, District Judge of the Above-entitled Court:

The above-named Kaichiri Sugimoto, being ag-

grieved by the order made and entered in the above-entitled cause on the 5th day of July, 1929, denying to him a writ of habeas corpus and dismissing the petition, therefore does hereby appeal from said order to the United States Circuit Court of Appeals for the Ninth Circuit, for the reasons set forth in the assignment of errors filed herewith, and therefore prays that this appeal be allowed and that citations be issued, as provided by law, and that a transcript of the records, proceedings and documents upon which said order was based, duly authenticated, be sent to the United States Circuit Court of Appeals for the Ninth Circuit.

Your petitioner prays further that the proper order prescribing the security for payment of costs on appeal, required to perfect the same, be made.

Dated: San Francisco, California, July 10, 1929.

A. B. BIANCHI,

JOSEPH LEO HYMAN,

Attorneys for Petitioner and Appellant. [26]

[Endorsed]: Service and receipt of a copy of the within assignment of errors is hereby admitted this 10th day of July, 1929.

GEO. J. HATFIELD,

Attorney for Respondent.

Filed Jul. 10, 1929. [27]

[Title of Court and Cause.]

ASSIGNMENT OF ERRORS.

Now comes the petitioner in the above-entitled cause, by his attorneys, A. B. Bianchi, Esquire, and Joseph Leo Hyman, Esquire, and finds that the order entered in the above-entitled cause on the 5th day of July, 1929, denying him a writ of habeas corpus and dismissing the petition for same, is erroneous and unjust to the petitioner, and he specifies and assigns the following errors upon which he will rely in his appeal to the United States Circuit Court of Appeals, Ninth Circuit, from the aforementioned order herein:

1. That the said District Court erred in dismissing the petition and refusing to issue a writ of habeas corpus, as prayed;

2. That the said District Court erred in holding and deciding that the said Kaichiro Sugimoto was not entitled to a writ of habeas corpus, directed to the Commissioner of Labor, and directing that he, the said detained, be relieved of restraint and discharged from custody forthwith and without delay;

3. That the said District Court erred in holding and deciding that the said Kaichiro Sugimoto was not entitled to admission to the United States as an immigrant previously lawfully admitted to the United States who is returning from a temporary visit abroad; [28]

4. That the said District Court erred in holding

and deciding that the said Kaichiro Sugimoto was not at the time he sought admission an immigrant previously lawfully admitted to the United States who is returning from a temporary visit abroad, as the same is defined in that certain Federal act and statute known and designated as the Immigration Act of 1924, and particularly Section 4 (b); 8 U. S. C. A., Section 204 (b) thereof;

5. That the said District Court erred in holding and deciding upon the basis that the said petitioner and detained had not sustained the burden of proof as to his previous lawful admission into the United States; the admission to the United States, as defined in Section 28-a of the Immigration Act of 1924 (8 U. S. C. A., Sec. 224-a), being established and admitted;

6. That the Court erred in holding and deciding that the petitioner could not again return to the Continental United States if he voluntarily departed for Hawaii;

7. That the Court erred in holding and deciding that the Immigration Act of 1924, Section 28-a thereof, did not apply to the petitioner's present application for admission;

8. That the Court erred in holding and deciding that the petitioner could not be readmitted under the Immigration Act of 1907 or the Immigration Act of 1917.

WHEREFORE, the petitioner prays that the afore-mentioned order of the Southern Division of the United States District Court for the Northern

District of California, made and entered herein on the 5th day of July, 1929, denying said petitioner a writ of habeas corpus and dismissing his petition for same, be reversed and that this cause be remanded [29] to the United States District Court, with directions to issue a writ of habeas corpus to your petitioner herein, or such other relief as to said Circuit Court of Appeals for said district shall seem just.

Dated: San Francisco, Calif., July 10, 1929.

A. B. BIANCHI,

JOSEPH LEO HYMAN,

Attorneys for Petitioner.

[Endorsed]: Service and receipt of a copy of the within assignment of errors is hereby admitted this 10th day of July, 1929.

GEO. J. HATFIELD,

Attorney for Respondent.

Filed Jul. 10, 1929. [30]

[Title of Court and Cause.]

ORDER ALLOWING APPEAL AND FIXING
COST BOND.

The petition of Kaichiro Sugimoto for an appeal from the order of the above-entitled court, made and entered herein on the 5th day of July, 1929, denying said petitioner a writ of habeas corpus and dismissing the petition, is granted, and the appeal

allowed upon the giving of a bond, conditioned as required by law, in the sum of Two Hundred Fifty Dollars (\$250.00).

Dated: San Francisco, California, July 10, 1929.

FRANK H. KERRIGAN,
United States District Judge.

[Endorsed]: Service and receipt of a copy of the within order is hereby admitted this 10th day of July, 1929.

GEO. J. HATFIELD,
Attorney for Respondent.

Filed Jul. 10, 1929. [31]

[Title of Court and Cause.]

COST BOND.

KNOW ALL MEN BY THESE PRESENTS: The undersigned, American Employers' Insurance Company, of Boston, Massachusetts, a corporation, organized and existing under and by virtue of the laws of the State of Massachusetts, doing and authorized to do a general surety business, is held and firmly bound unto the United States of America in the sum of Two Hundred and Fifty Dollars (\$250.00), to be paid to said United States of America; the payment of which said sum the undersigned American Employers' Insurance Company, of Boston, Massachusetts, hereby binds itself by these presents.

WHEREAS, lately, at the District Court of the United States, Southern Division, for the Northern District of California, in a proceeding for a writ of habeas corpus in said court, on behalf of Kaichiro Sugimoto, an order was made and entered dismissing the petition for said writ and denying said writ, and the said Kaichiro Sugimoto has obtained an order allowing an appeal and fixing cost bond, and a citation directed to the United States of America, citing and admonishing it to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at San Francisco, in the State of California,—[32]

Now, the condition of the above obligation is such, that if the said appellant shall prosecute his appeal to effect, and answer all costs if he fails to make his appeal good, then the above obligation to be void.

This recognizance shall be deemed and construed to contain the express agreement for summary judgment, and execution thereon, mentioned in Rule 34 of the District Court.

IN WITNESS WHEREOF, said American Employers' Insurance Company, of Boston, Massachusetts, has caused these presents to be executed by its officer, thereunder duly authorized this 9th day of July, 1929.

A M E R I C A N E M P L O Y E R S ' I N S U R -
A N C E C O M P A N Y .

[Seal]

By JOHN STONE PERRY,

Attorney-in-fact.

The foregoing bond is hereby approved.

FRANK H. KERRIGAN,
Judge. [33]

State of California,

City and County of San Francisco,—ss.

On this 9th day of July, in the year of our Lord one thousand nine hundred and twenty-nine, before me, John McCallan, a notary public in and for said City and County and State, residing therein, duly commissioned and sworn, personally appeared John Stone Perry, known to me to be the person whose name is subscribed to the within instrument, as the attorney-in-fact of American Employers' Insurance Co., and acknowledged to me that he subscribed the name of American Employers' Insurance Co. thereto as surety, and his own name as attorney-in-fact.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed my official seal, at my office in the City and County and State aforesaid, the day and year in this certificate first above written.

[Seal] JOHN McCALLAN,
Notary Public in and for said City and County of
San Francisco, State of California.

[Endorsed]: Filed Jul. 10, 1929. [34]

CERTIFICATE OF CLERK U. S. DISTRICT
COURT TO TRANSCRIPT ON APPEAL.

I, Walter B. Maling, Clerk of the United States

District Court for the Northern District of California, do hereby certify that the foregoing 34 pages, numbered from 1 to 34, inclusive, contain a full, true and correct transcript of the records and proceedings, in the matter of Kaichiro Sugimoto, on Habeas Corpus, No. 20,006-K, as the same now remain on file of record in this office.

I further certify that the cost for preparing and certifying the foregoing transcript on appeal is the sum of twelve dollars and fifty cents (\$12.50), and that the same has been paid to me by the attorney for the appellant herein.

IN WITNESS WHEREOF, I have hereunto set my hand and affixed the seal of said District Court, this 10th day of August, A. D. 1929.

[Seal]

WALTER B. MALING,

Clerk.

By C. M. Taylor,
Deputy Clerk. [35]

CITATION ON APPEAL.

United States of America,—ss.

The President of the United States to JOHN D. NAGLE, Commissioner of Immigration, San Francisco, and GEORGE J. HATFIELD, His Attorney, GREETING:

You are hereby cited and admonished to be and appear at a United States Circuit Court of Appeals for the Ninth Circuit, to be holden at the city of San Francisco, in the State of California, within

thirty days from the date hereof, pursuant to an order allowing an appeal, of record in the Clerk's office of the United States District Court for the Northern District of California, Southern Division, wherein Kaichiro Sugimoto is appellant, and you are appellee, to show cause, if any there be, why the decree rendered against the said appellant, as in the said order allowing appeal mentioned, should not be corrected, and why speedy justice should not be done to the parties in that behalf.

WITNESS, the Honorable FRANK H. KERRIGAN, United States District Judge for the Northern District of California, this 10th day of July, A. D. 1929.

FRANK H. KERRIGAN,
United States District Judge.

Service and receipt of a copy of the within citation on appeal is hereby admitted this 10th day of July, 1929.

GEO. J. HATFIELD,
Attorney for Respondent.

[Endorsed]: Filed Jul. 10, 1929. [36]

[Endorsed]: No. 5921. United States Circuit Court of Appeals for the Ninth Circuit. Kaichiro Sugimoto, Appellant, vs. John D. Nagle, as Commissioner of Immigration for the Port of San Francisco, Appellee. Transcript of Record. Upon

Appeal from the United States District Court for the Northern District of California, Southern Division.

Filed August 19, 1929.

PAUL P. O'BRIEN,
Clerk of the United States Circuit Court of Appeals
for the Ninth Circuit.